

1                                   A bill to be entitled  
2       An act relating to technology transparency; creating  
3       s. 106.072, F.S.; providing definitions; prohibiting a  
4       social media platform from knowingly deplatforming a  
5       candidate; providing fines for violations; authorizing  
6       social media platforms to provide free advertising for  
7       candidates under specified conditions; providing  
8       enforcement mechanism; creating s. 287.137, F.S.;  
9       providing definitions; providing requirements for  
10      public contracts and economic incentives related to  
11      entities who have been convicted or held civilly  
12      liable for antitrust violations; prohibiting a public  
13      entity from entering into any type contract with a  
14      person or affiliate on the antitrust violator vendor  
15      list; providing applicability; requiring certain  
16      contract documents to contain a specified statement;  
17      requiring the Department of Management Services to  
18      maintain a list of people or affiliates disqualified  
19      from the public contracting and purchasing process;  
20      specifying requirements for publishing such list;  
21      providing procedures for placing a person or affiliate  
22      on the list; providing procedural and legal rights for  
23      a person or affiliate to challenge placement on the  
24      list; providing a procedure for placing a person  
25      temporarily on an antitrust violator vendor list;

26 providing procedural and legal rights for a person to  
27 challenge temporary placement on the list; authorizing  
28 a person, under specified conditions, to retain rights  
29 or obligations under existing contracts or binding  
30 agreements; prohibiting a person who has been placed  
31 on antitrust violator vendor list from receiving  
32 certain economic incentives; providing exceptions;  
33 providing enforcement methodology; creating s.  
34 501.2041, F.S.; providing definitions; authorizing the  
35 Department of Legal Affairs to bring specified actions  
36 against social media platforms for failure to comply  
37 with specified requirements; specifying requirements  
38 that must be contained when notification is given by a  
39 social platform for certain purposes; providing an  
40 exception to notification requirements; authorizing  
41 the department to investigate suspected violations  
42 under the Deceptive and Unfair Trade Practices Act;  
43 specifying circumstances under which a private cause  
44 of action may be brought; specifying how damages are  
45 to be calculated; providing construction for  
46 violations of certain provisions of this act;  
47 specifying powers of the Department of Legal Affairs  
48 related to investigations related to acts of shadow  
49 banning by social media platforms; granting the  
50 department specified subpoena powers; providing

51 enforcement authority; amending s. 501.212, F.S.;  
52 conforming a provision to changes made by the act;  
53 providing a severability clause; providing an  
54 effective date.

55  
56 Be It Enacted by the Legislature of the State of Florida:

57  
58 Section 1. Section 106.072, Florida Statutes, is created  
59 to read:

60 106.072 Social media deplatforming of political  
61 candidates.—

62 (1) As used in this section, the term:

63 (a) "Candidate" has the same meaning as in s.  
64 106.011(3)(e).

65 (b) "Deplatform" has the same meaning as in s. 501.2041.

66 (c) "Social media platform" has the same meaning as in s.  
67 501.2041.

68 (2) A social media platform may not knowingly deplatform a  
69 candidate. Upon a finding of a violation of this section by the  
70 Elections Commission, in addition to the remedies provided in  
71 ss. 106.265 and 106.27, the social media platform may be fined  
72 \$100,000 per day for statewide candidates and \$10,000 per day  
73 for other candidates.

74 (3) A social media platform that knowingly provides free  
75 advertising for a candidate must inform the candidate of such

76 in-kind contribution. Posts, content, material, and comments by  
77 candidates that are shown on the platform in the same or similar  
78 way as other user's posts, content, material, and comments is  
79 not considered free advertising.

80 (4) This section may only be enforced to the extent not  
81 inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and  
82 notwithstanding any other provision of state law.

83 Section 2. Section 287.137, Florida Statutes, is created  
84 to read:

85 287.137 Antitrust violations; denial or revocation of the  
86 right to transact business with public entities; denial of  
87 economic benefits.—

88 (1) As used in this section, the term:

89 (a) "Affiliate" means:

90 1. A predecessor or successor of a person convicted of or  
91 held civilly liable for an antitrust violation; or

92 2. An entity under the control of any natural person who  
93 is active in the management of the entity and who has been  
94 convicted of or held civilly liable for an antitrust violation.

95 The term includes those officers, directors, executives,  
96 partners, shareholders, employees, members, and agents who are  
97 active in the management of an affiliate. The ownership by one  
98 person of shares constituting a controlling interest in another  
99 person, or a pooling of equipment or income among persons when  
100 not for fair market value under an arm's length agreement, is a

101 prima facie case that one person controls another person. The  
102 term also includes a person who knowingly enters into a joint  
103 venture with a person who has violated an antitrust law during  
104 the preceding 36 months.

105 (b) "Antitrust violation" means any state or federal  
106 antitrust law as determined in a civil or criminal proceeding  
107 brought by the Attorney General, a state attorney, a similar  
108 body or agency of another state, the Federal Trade Commission,  
109 or the United States Department of Justice.

110 (c) "Antitrust violator vendor list" means the list  
111 required to be kept by the department pursuant to paragraph  
112 (3) (b) .

113 (d) "Conviction or being held civilly liable" or  
114 "convicted or held civilly liable" means a criminal finding of  
115 guilt or conviction, with or without an adjudication of guilt,  
116 being held civilly liable, or having a judgment levied for an  
117 antitrust violation, in any federal or state trial court of  
118 record relating to charges brought by indictment, information,  
119 or complaint on or after July 1, 2021, as a result of a jury  
120 verdict, nonjury trial, or entry of a plea of guilty or nolo  
121 contendere or other order finding of liability.

122 (e) "Economic incentives" means state grants, cash grants,  
123 tax exemptions, tax refunds, tax credits, state funds, and other  
124 state incentives under chapter 288 or administered by Enterprise  
125 Florida, Inc.

126        (f) "Person" means a natural person or an entity organized  
127 under the laws of any state or of the United States who operates  
128 as a social media platform, as defined in s. 501.2041, with the  
129 legal power to enter into a binding contract and which bids or  
130 applies to bid on contracts let by a public entity, or which  
131 otherwise transacts or applies to transact business with a  
132 public entity. The term "person" includes those officers,  
133 directors, executives, partners, shareholders, employees,  
134 members, and agents who are active in management of an entity.

135        (g) "Public entity" means the state and any of its  
136 departments or agencies.

137        (2) (a) A person or affiliate who has been placed on the  
138 antitrust violator vendor list following a conviction or being  
139 held civilly liable for an antitrust violation may not submit a  
140 bid, proposal, or reply for any new contract to provide any  
141 goods or services to a public entity; may not submit a bid,  
142 proposal, or reply for a new contract with a public entity for  
143 the construction or repair of a public building or public work;  
144 may not submit a bid, proposal, or reply on new leases of real  
145 property to a public entity; may not be awarded or perform work  
146 as a contractor, supplier, subcontractor, or consultant under a  
147 new contract with a public entity; and may not transact new  
148 business with a public entity.

149        (b) A public entity may not accept a bid, proposal, or  
150 reply from, award a new contract to, or transact new business

151 with any person or affiliate on the antitrust violator vendor  
152 list unless that person or affiliate has been removed from the  
153 list pursuant to paragraph (3) (e).

154 (c) This subsection does not apply to contracts that were  
155 awarded or business transactions that began before a person or  
156 an affiliate was placed on the antitrust violator vendor list,  
157 and in no event before July 1, 2021.

158 (3) (a) Beginning July 1, 2021, all invitations to bid,  
159 requests for proposals, and invitations to negotiate, as defined  
160 in s. 287.012, and any contract document described in s. 287.058  
161 shall contain a statement informing persons of the provisions of  
162 paragraph (2) (a).

163 (b) The department shall maintain an antitrust violator  
164 vendor list of the names and addresses of the people or  
165 affiliates who have been disqualified from the public  
166 contracting and purchasing process under this section. The  
167 department shall publish the initial antitrust violator vendor  
168 list on January 1, 2022, and shall publish an updated version of  
169 the list quarterly thereafter. The revised quarterly list shall  
170 also be electronically posted. Notwithstanding this paragraph, a  
171 person or affiliate disqualified from the public contracting and  
172 purchasing process pursuant to this section is disqualified as  
173 of the date the final order is entered.

174 (c)1. Upon receiving reasonable information from any  
175 source that a person was convicted or held civilly liable, the

176 department shall investigate the information and determine  
177 whether good cause exists to place that person or an affiliate  
178 of that person on the antitrust violator vendor list. If good  
179 cause exists, the department shall notify the person or  
180 affiliate in writing of its intent to place the name of that  
181 person or affiliate on the antitrust violator vendor list, and  
182 of the person's or affiliate's right to a hearing, the procedure  
183 that must be followed, and the applicable time requirements. If  
184 the person or affiliate does not request a hearing, the  
185 department shall enter a final order placing the name of the  
186 person or affiliate on the antitrust violator vendor list. A  
187 person or affiliate may not be placed on the antitrust violator  
188 vendor list without receiving an individual notice of intent  
189 from the department.

190 2. Within 21 days after receipt of the notice of intent,  
191 the person or affiliate may file a petition for a formal hearing  
192 under ss. 120.569 and 120.57(1) to determine whether it is in  
193 the public interest for the person or affiliate to be placed on  
194 the antitrust violator vendor list. A person or affiliate may  
195 not file a petition for an informal hearing under s. 120.57(2).  
196 The procedures of chapter 120 shall apply to any formal hearing  
197 under this paragraph except within 30 days after the formal  
198 hearing or receipt of the hearing transcript, whichever is  
199 later, the administrative law judge shall enter a final order,  
200 which shall consist of findings of fact, conclusions of law,



201 interpretation of agency rules, and any other information  
202 required by law or rule to be contained in the final order. The  
203 final order shall direct the department to place or not place  
204 the person or affiliate on the antitrust violator vendor list.  
205 The final order of the administrative law judge is final agency  
206 action for purposes of s. 120.68.

207 3. In determining whether it is in the public interest to  
208 place a person or affiliate on the antitrust violator vendor  
209 list under this paragraph, the administrative law judge shall  
210 consider the following factors:

211 a. Whether the person or affiliate committed an antitrust  
212 violation.

213 b. The nature and details of the antitrust violation.

214 c. The degree of culpability of the person or affiliate  
215 proposed to be placed on the antitrust violator vendor list.

216 d. Reinstatement or clemency in any jurisdiction in  
217 relation to the antitrust violation at issue in the proceeding.

218 e. The needs of public entities for additional competition  
219 in the procurement of goods and services in their respective  
220 markets.

221 4. In any proceeding under this paragraph, the department  
222 must prove that it is in the public interest for the person or  
223 affiliate to whom it has given notice under this paragraph to be  
224 placed on the antitrust violator vendor list. Proof that a  
225 person was convicted or was held civilly liable, or that an

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entity is an affiliate of a person constitutes a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list. Status as an affiliate must be proven by clear and convincing evidence. If the administrative law judge determines that the person was not convicted or that the person was not civilly liable or is not an affiliate of such person, that person or affiliate shall not be placed on the antitrust violator vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the antitrust violator vendor list may offer evidence on any relevant issue. An affidavit alone does not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person so convicted or held civilly liable. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the antitrust violator vendor list, the person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the antitrust violator vendor list, based upon evidence addressing the factors in subparagraph 3.

(d)1. If a person has been charged or accused of any state or federal antitrust law in a civil or criminal proceeding

251 brought by the Attorney General, a state attorney, the Federal  
252 Trade Commission, or the United States Department of Justice on  
253 or after July 1, 2021, the Attorney General may, by a finding of  
254 probable cause that a person has likely violated the underlying  
255 antitrust laws, temporarily place such person on the antitrust  
256 violation vendor list until such proceeding has concluded.

257 2. If probable cause exists, the Attorney General shall  
258 notify the person in writing of its intent to temporarily place  
259 the name of that person on the antitrust violation vendor list,  
260 and of the person's right to a hearing, the procedure that must  
261 be followed, and the applicable time requirements. If the person  
262 does not request a hearing, the Attorney General shall enter a  
263 final order temporarily placing the name of the person on the  
264 antitrust violation vendor list. A person may not be placed on  
265 the antitrust violation vendor list without receiving an  
266 individual notice of intent from the Attorney General.

267 3. Within 21 days after receipt of the notice of intent,  
268 the person may file a petition for a formal hearing pursuant to  
269 ss. 120.569 and 120.57(1) to determine whether it is in the  
270 public interest for the person to be temporarily placed on the  
271 antitrust violation vendor list. A person may not file a petition  
272 for an informal hearing under s. 120.57(2). The procedures of  
273 chapter 120 shall apply to any formal hearing under this  
274 paragraph.

275 4. In determining whether it is in the public interest to

276 place a person on the antitrust violator vendor list under this  
277 paragraph, the administrative law judge shall consider the  
278 following factors:

279 a. The likelihood the person committed the antitrust  
280 violation.

281 b. The nature and details of the antitrust violation.

282 c. The degree of culpability of the person proposed to be  
283 placed on the antitrust violator vendor list.

284 d. The needs of public entities for additional competition  
285 in the procurement of goods and services in their respective  
286 markets.

287 5. This paragraph does not apply to affiliates.

288 (e)1. A person or affiliate may be removed from the  
289 antitrust violator vendor list subject to such terms and  
290 conditions as may be prescribed by the administrative law judge  
291 upon a determination that removal is in the public interest. In  
292 determining whether removal would be in the public interest, the  
293 administrative law judge must consider any relevant factors,  
294 including, but not limited to, the factors identified in  
295 subparagraph (c)3. Upon proof that a person was found not guilty  
296 or not civilly liable, the antitrust violation case was  
297 dismissed, the court entered a finding in the person's favor,  
298 the person's conviction or determination of liability has been  
299 reversed on appeal, or that the person has been pardoned, the  
300 administrative law judge shall determine that removal of the

301 person or an affiliate of that person from the antitrust  
302 violation vendor list is in the public interest. A person or  
303 affiliate on the antitrust violation vendor list may petition for  
304 removal from the list no sooner than 6 months after the date a  
305 final order is entered pursuant to this section but may petition  
306 for removal at any time if the petition is based upon a reversal  
307 of the conviction or liability on appellate review or pardon.  
308 The petition must be filed with the department, and the  
309 proceeding must be conducted pursuant to the procedures and  
310 requirements of this subsection.

311 2. If the petition for removal is denied, the person or  
312 affiliate may not petition for another hearing on removal for a  
313 period of 9 months after the date of denial, unless the petition  
314 is based upon a reversal of the conviction on appellate review  
315 or a pardon. The department may petition for removal before the  
316 expiration of such period if, in its discretion, it determines  
317 that removal would be in the public interest.

318 (4) The conviction of a person or a person held civilly  
319 liable for an antitrust violation, or placement on the antitrust  
320 violation vendor list, does not affect any rights or obligations  
321 under any contract, franchise, or other binding agreement which  
322 predates such conviction or placement on the antitrust violation  
323 vendor list.

324 (5) A person who has been placed on the antitrust violation  
325 vendor list is not a qualified applicant for economic incentives

326 under chapter 288, and such entity and shall not be qualified to  
327 receive such economic incentives.

328 (6) This section does not apply to any activities  
329 regulated by the Public Service Commission or to the purchase of  
330 goods or services made by any public entity from the Department  
331 of Corrections, from the nonprofit corporation organized under  
332 chapter 946, or from any accredited nonprofit workshop certified  
333 under ss. 413.032-413.037.

334 (7) This section may only be enforced to the extent not  
335 inconsistent with federal law and notwithstanding any other  
336 provision of state law.

337 Section 3. Section 501.2041, Florida Statutes, is created  
338 to read:

339 501.2041 Unlawful acts and practices by social media  
340 platforms.—

341 (1) As used in this section, the term:

342 (a) "Algorithm" means a mathematical set of rules that  
343 specify how a group of data behaves that will assist in ranking  
344 search results and maintaining order or that is used in sorting  
345 or ranking content or material based on relevancy or other  
346 factors instead of using published time or chronological order  
347 of such content or material.

348 (b) "Censor" includes any action taken by a social media  
349 platform to delete, regulate, restrict, edit, alter, inhibit the  
350 publication or republication of, suspend a right to post,

351 remove, or post an addendum to any content or material posted by  
352 a user. This term also includes actions to inhibit the ability  
353 of a user to be viewable by or to interact with another user of  
354 the social media platform.

355 (c) "Deplatform" means the action or practice by a social  
356 media platform to permanently delete or ban a user or to  
357 temporarily delete or ban a user from the social media platform  
358 for more than 60 days.

359 (d) "Journalistic enterprise" means an entity that:  
360 1. Publishes in excess of 100,000 words available online  
361 with at least 50,000 paid subscribers or 100,000 monthly active  
362 users;

363 2. Publishes 100 hours of audio or video available online  
364 with at least 100 million viewers annually;

365 3. Operates a cable channel that provides more than 40  
366 hours of content per week to more than 100,000 cable television  
367 subscribers; or

368 4. Operates under a broadcast license issued by the  
369 Federal Communications Commission.

370 (e) "Post-prioritization" means action by a social media  
371 platform to place, feature, or prioritize certain content or  
372 material ahead of, below, or in a more or less prominent  
373 position than others in a newsfeed, feed, view, or search  
374 results. The term does not include post-prioritization of  
375 content and material based on payments by a third party,

376 including other users, to the social media platform.

377 (f) "Shadow ban" means action by a social media platform,  
378 through any means, whether the action is determined by a natural  
379 person or an algorithm, to limit or eliminate the exposure of a  
380 user or content or material posted by a user to other users of  
381 the social media platform. This term includes acts of shadow  
382 banning by a social media platform that are not readily apparent  
383 to a user.

384 (g) "Social media platform" means any information service,  
385 system, Internet search engine, or access software provider that  
386 does business in the state, and provides or enables computer  
387 access by multiple users to a computer server, including an  
388 Internet platform and/or a social media site. The Internet  
389 platform or social media site may be a sole proprietorship,  
390 partnership, limited liability company, corporation,  
391 association, or other legal entity that does business in the  
392 state and that satisfies at least one of the following  
393 thresholds:

394 1. Has annual gross revenues in excess of \$100 million, as  
395 adjusted in January of each odd-numbered year to reflect any  
396 increase in the Consumer Price Index.

397 2. Has at least 100 million monthly individual platform  
398 participants globally.

399 (h) "User" means a person who resides or is domiciled in  
400 the state and who has an account on a social media platform,



401 regardless of whether the person posts or has posted content or  
402 material to the social media platform.

403 (2) A social media platform that fails to comply with any  
404 of the provisions of paragraphs (a)-(j) commits an unfair or  
405 deceptive act or practice as specified in s. 501.204.

406 (a) A social media platform must publish the standards,  
407 including detailed definitions, it uses or has used for  
408 determining how to censor, deplatform, and shadow ban.

409 (b) A social media platform must apply censorship,  
410 deplatforming, and shadow banning standards in a consistent  
411 manner among its users on the platform.

412 (c) A social media platform must inform each user about  
413 any changes to its user rules, terms, and agreements before  
414 implementing the changes and may not make changes more than once  
415 every 30 days.

416 (d) A social media platform may not censor a user's  
417 content or material or deplatform a user from the social media  
418 platform:

419 1. Without notifying the user who posted or attempted to  
420 post the content or material; or

421 2. In a way that violates this part.

422 (e) A social media platform must:

423 1. Provide a mechanism that allows a user to request the  
424 number of other individual platform participants who were  
425 provided or shown the user's content or posts.

426        2. Provide, upon request, a user with the number of other  
427 individual platform participants who were provided or shown  
428 content or posts.

429        (f) A social media platform must:

430        1. Categorize algorithms used for post-prioritization and  
431 shadow banning.

432        2. Allow a user to opt out of post-prioritization and  
433 shadow banning algorithm categories to allow sequential or  
434 chronological posts and content.

435        (g) A social media platform must provide users with an  
436 annual notice on the use of algorithms for post-prioritization  
437 and shadow banning and reoffer annually the opt-out opportunity  
438 in subparagraph (2) (f)2.

439        (h) A social media company may not apply or use post-  
440 prioritization or shadow banning algorithms for content and  
441 material posted by or about a user who is known by the social  
442 media platform to be a candidate as defined in s. 106.011(3)(e),  
443 beginning from the date of qualification and ending on the date  
444 of the election or the date such candidate for office ceases to  
445 be a candidate before the date of election. Post-prioritization  
446 of certain content or material from or about a candidate for  
447 office based on payments to the social media platform by such  
448 candidate for office or a third party is not a violation of this  
449 paragraph. Social media platforms must provide users with a  
450 method to identify themselves as qualified candidates, and may

451 confirm such qualification by reviewing the website of the  
452 Division of Elections of the Department of State.

453 (i) A social media platform must allow a user who has been  
454 deplatformed to access or retrieve all of the user's  
455 information, content, material, and data for at least 60 days  
456 after being deplatformed.

457 (j) A social media platform may not take any action to  
458 censor, deplatform, or shadow ban a journalistic enterprise  
459 based on the content of its publication or broadcast. Post-  
460 prioritization of certain journalistic enterprise content based  
461 on payments to the social media platform by such journalistic  
462 enterprise is not a violation of this paragraph.

463 (3) For purposes of subparagraph (2)(d)1., a notification  
464 must:

465 (a) Be in writing.

466 (b) Be delivered via electronic mail or direct electronic  
467 notification to the user within 30 days of the censoring action.

468 (c) Include a thorough rationale explaining the reason  
469 that the social media platform censored the user.

470 (d) Include a precise and thorough explanation of how the  
471 social media platform became aware of the censored content or  
472 material, including a thorough explanation of the algorithms  
473 used, if any, to identify or flag the user's content or material  
474 as objectionable.

475 (4) Notwithstanding any other provisions of this section,

476 a social media platform is not required to notify a user if the  
477 censored content or material is obscene as defined in s.  
478 847.001.

479 (5) If the department, by its own inquiry or as a result  
480 of a complaint, suspects that a violation of this section is  
481 imminent, occurring, or has occurred, the department may  
482 investigate the suspected violation in accordance with this  
483 part. Based on its investigation, the department may bring a  
484 civil or administrative action under this part.

485 (6) A user may only bring a private cause of action for  
486 violations of paragraph (2) (b) or subparagraph (2) (d)1. In a  
487 private cause of action brought under paragraph (2) (b) or  
488 subparagraph (2) (d)1., the court may award the following damages  
489 to the user:

490 (a) Up to \$100,000 in statutory damages per proven claim.

491 (b) Actual damages.

492 (c) If aggravating factors are present, punitive damages.

493 (d) Other forms of equitable relief.

494 (e) If the user was deplatformed in violation of paragraph  
495 (2) (b), costs and reasonable attorney fees.

496 (7) For purposes of bringing an action under subsection  
497 (2) or subsection (6), each failure to comply with the  
498 individual provisions of subsection (2) shall be treated as a  
499 separate violation, act, or practice.

500 (8) In an investigation by the department into alleged

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violations of this section, the department's investigative powers include, but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

(9) This section may only be enforced to the extent not inconsistent with federal law and 47 U.S.C. s. 230(e)(3), and notwithstanding any other provision of state law.

Section 4. Subsection (2) of section 501.212, Florida Statutes, is amended to read:

501.212 Application.—This part does not apply to:

(2) Except as provided in s. 501.2041, a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter, insofar as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this part.

Section 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 6. This act shall take effect July 1, 2021.